STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-381

September 3, 1998

CENTRAL MAINE POWER COMPANY
Request for Approval of
Affiliated Interest Transaction
for Arrangement with MainePower
(Amended to Union Water-Power
Company) for Performance of
Energy Management Services
Pursuant to an Areawide Public
Utilities Contract with the USGSA
and Petition for Waiver of
Chapters 820

ORDER

WELCH, Chairman; NUGENT, Commissioner

I. SUMMARY

In this Order we approve a stipulation that will allow Central Maine Power Company (CMP or the Company) to operate under an areawide public utilities contract with the federal government (Areawide Contract), without establishing a separate subsidiary. Neither CMP nor its subsidiary Union Water-Power Company (Union) may enter into new arrangements under the Areawide Contract after February 29, 2000, without specific Commission approval.

II. BACKGROUND

On May 20, 1998, CMP filed a petition for a waiver and approval of an arrangement between CMP and its marketing affiliate, MainePower.[1] The request relates to CMP's provision of energy management services to federal facilities under an areawide public utilities contract with the United States General Services Administration.[2] CMP asked the Commission to:

[1] As described on page 3 of this Order, CMP recently decided that its subsidiary Union Water-Power Company will provide energy management services under the Areawide Contract instead of MainePower.

[2] According to CMP's Petition, under this program contracting officers for federal agencies may procure certain energy management services from regulated gas and electric utilities on a sole-source basis. The utility can subcontract the work, including to a subsidiary, but the federal agency cannot contract with the subsidiary directly. The Areawide Contract is a master

1) waive Chapter 820's requirement that non-core utility activities occur in a corporate entity separate from the regulated utility so that CMP may continue to operate under the Areawide Contract it entered into in 1996;

2) find that the intended transactions between CMP and MainePower, as they relate to the Areawide Contract, are in the public interest pursuant to 35-A M.R.S.A. § 707(3); and

3) allow CMP to use its monthly electric service bill to charge federal facilities for energy management services performed under the Areawide Contract.

On July 9, 1998, the Hearing Examiner issued a Notice of Proceeding. A copy of the notice was sent to all parties to Docket No. 97-930, *Central Maine Power Company Application for Approval of Reorganizations under Section 708, of Transactions with Affiliated Interests under Section 707, and of Transfers of Assets under Section 1101 of Title 35-A M.R.S.A.* Only the Public Advocate intervened and the Hearing Examiner granted that petition during a prehearing conference held on July 20, 1998. OPA did not attend the conference.

During the prehearing conference, the Examiner and representatives of CMP and MainePower discussed certain issues including whether the arrangement is consistent with the codes of conduct contained in 35-A M.R.S.A. § 3205(3), given that CMP's affiliate, MainePower, is a competitive provider. At the close of the conference, the examiner asked CMP to provide additional information describing the transactions that would occur between CMP and MainePower under the proposed arrangement. CMP submitted that information on July 22, 1998 (Supplemental Information). According to CMP, all information will flow one way: from MainePower to CMP. CMP will not be involved in choosing, negotiating or implementing projects. MainePower will compensate CMP for all costs and expenses associated with CMP's review and authorization of the projects and all costs associated with project billings pursuant to Chapter 820.

On July 24, 1998, the Hearing Examiner asked CMP to brief two additional issues:

1. Why energy management acquired under the Areawide Contract would be a "non-core" activity under Chapter 820 of the Commission's Rules.

---

agreement. Each project-specific service is initiated through a separate authorization between CMP and the ordering agency.

2. Why profits associated with the Areawide Contract should be treated as below-the-line, when the Contract exists solely due to CMP's status as a regulated utility.

The Examiner also asked CMP to provide projected profits from the Areawide Contract. On July 29, 1998, CMP requested a protective order in order to treat projections of anticipated profits as proprietary and/or confidential business information. The Examiner issued such a protective order on July 31, 1998.

CMP filed its brief on August 5. On the same day, CMP and the OPA filed a stipulation to resolve all outstanding issues in this proceeding. Under the Stipulation, OPA and CMP agree that CMP's requests for waivers, findings, and approvals contained in its Petition and Supplemental Information are consistent with the public interest subject to two conditions. First, that after February 29, 2000, MainePower will cease entering into new arrangements under the Areawide Contract, unless the Commission specifically approves such activity. Second, after February 29, 2000, CMP will cease billing for new projects under the Areawide Contract, unless CMP provides such billing for other non-affiliated entities, in which case it may do so under the same terms and conditions. On August 11, 1998, the Examiner held a conference of counsel with the parties to gather additional information about the Stipulation.

On August 13, 1998, the Hearing Examiner issued a Hearing Examiner's Report recommending that the Commission approve the Stipulation. OPA and CMP filed responses to the Report on August 18 and August 20, respectively.

On August 26 1998, CMP filed a letter stating that CMP's Board of Directors decided on August 20 that the energy management activities under the Areawide Contract would be undertaken by another subsidiary of CMP, Union Water-Power Company, rather than MainePower. Therefore, CMP's requests in this docket relate to arrangements between CMP and Union Water rather than MainePower. In all other respects the arrangements and issues are identical. CMP further noted that Union Water undertaking these activities will avoid potential problems under 35-A M.R.S.A § 3205(3) related to transactions between a utility and its affiliated competitive provider. Union Water is not an affiliated competitive provider of CMP. On August 31, CMP's counsel called the Hearing Examiner and represented that the Public Advocate had no objection to this change.

The Commission considered this request and the Hearing Examiner's recommendation at its deliberative session on August 31, 1998.

III. DISCUSSION

We recently addressed the relationship between a regulated utility and an affiliated company under an Areawide Contract in a case involving Northern Utilities (NU). *Northern Utilities, Inc. Petition for Approval of Affiliated Interest Agreement with EnergyUSA, a Wholly Owned Subsidiary of Granite State Gas Transmission, Inc.* Docket No. 97-308 (July 10, 1997). There Northern asked for approval of affiliated interest transactions between Northern and EnergyUSA (EUSA) so EUSA could perform certain work on a contract with the United States Navy. EUSA is an affiliate of NU; both companies are owned by Bay State Gas. Under the arrangement, NU retained a 5.8% contractor's fee on a job estimated to cost $1.2 M. The Commission approved the arrangement as being in the public interest under 35-A M.R.S.A. § 707 and deferred treatment of any accounting and ratemaking issues.

CMP's Petition raises issues not addressed in Northern's request. In addition to asking the Commissions to approve an affiliated interest transaction between CMP and an affiliate under 35-A M.R.S.A. § 707, CMP requests a waiver of Chapter 820's requirement that CMP's non-core activities take place in a separate subsidiary and that CMP be permitted to bill for these non-core services.[3] The Hearing Examiner also questioned whether the energy management services under the contract were non-core or core demand side management required by both 35-A M.R.S.A. § 3211 and CMP's Alternative Rate Plan (ARP). We address these issues in the context of considering CMP's petition and the Stipulation agreed to by CMP and OPA.

A. Applicability of Chapter 820

CMP asks for a waiver of Chapter 820's requirement that non-core services be operated in a separate subsidiary. CMP views the Areawide Contract as a non-core utility service but desires to continue to operate under the contract while subcontracting the work under the contract to Union Water.

CMP's request for a waive of Chapter 820 turns on the question of whether energy management services under the Areawide Contract are "non-core" as defined in Chapter 820. Chapter 820 § 3(A) provides that:

> [a] utility may not offer core and non-core services through the same corporate entity. A utility must

[3] Chapter 820, Requirements for Non-Core Activities and Transactions Between Utility Affiliates, went into effect on August 14, 1998.

> establish a separate corporate entity to offer non-core services.

"Core utility service" is defined in section 2(c) of Chapter 820 as:

> the generation, transmission or distribution of electricity or gas, services necessary to perform those functions, services for which the utility is the provider of last resort or services the Commission requires the utility to provide, except that any service that a utility provides outside its service territory is not a core service.

CMP argues that the energy management provided pursuant to the contract is not Commission-authorized DSM pursuant to Chapter 380 of the Commission's rules. CMP further claims that DSM required under the ARP was intended to cover only activities meeting Chapter 380's definitions. Chapter 380 authorizes electric utilities to offer DSM programs that pass the All Ratepayers and Rate Impact Tests. Energy management services under the Areawide Contract are defined more broadly than those in Chapter 380 and include measures to provide energy savings, water savings, and demand reduction, all on a fuel-neutral basis.

We agree that given the breadth of services possible under the Areawide Contract, these services more clearly fit the definition of "non-core" than core service DSM. Depending on the circumstances of the contracted work, certain projects could meet Chapter 380's requirements and be undertaken by CMP itself to comply with its statutory DSM obligations. Given that CMP plans to have virtually no involvement in the work under the contract, waiving the requirement to form a separate subsidiary appears reasonable.

A finding that the services under the contract are "non-core" does not automatically lead to the conclusion that any profits associated with the Areawide Contract should be below-the-line. Chapter 820 establishes a regime whereby non-core activities occur in a separate subsidiary, with benefits and risks incurred by shareholders rather than the ratepayers. In this instance, however, the federal contract exists solely by virtue of CMP's status as a regulated utility. Therefore, it follows that the revenue should be accounted for above-the-line so that CMP and its ratepayers receive the benefits of the contract. CMP argues, in both its brief and comments on the Examiner's Report, that the non-core finding is determinative of this issue. CMP further argues that treatment as non-core

creates the proper symmetry of risk: ratepayers should not be placed at risk for the financial consequences of the non-core business venture. According to CMP, energy management under the Areawide Contract may be more risky than traditional DSM. However, the activities described in CMP's brief seem virtually identical to the activities undertaken by CMP through some of its DSM programs (e.g., feasibility studies, design, installation, ongoing O & M). In this instance, the existence of some risk does not justify below-the-line treatment. Nonetheless, as discussed below, the limited anticipated profits associated with the Areawide Contract together with the existence of the ARP allow us to conclude that below-the-line treatment is acceptable. We will reconsider this position if the profits are significantly greater than represented by CMP.[4]

B. Stipulation

Under the Stipulation, the OPA has agreed with CMP that it is in the public interest to allow the arrangements proposed by CMP to take place until at least February 29, 2000. OPA explained that the profits projected do not justify requiring a good will payment for benefits Union Water may derive from acquiring the right to contract with the Federal government due to its affiliation with CMP. The 2-year time frame will allow relationships that began when activities under the contract were taking place in CMP's Combined Energies Division to continue, without disruption. Both CMP and OPA agree that without an additional showing on CMP's part, Union Water or CMP will enter into no new arrangements under CMP's Areawide Contract after February 29, 2000.

We find that the Stipulation reasonably accommodates current circumstances and meets our standards for approving stipulations.[5] We grant a waiver of Chapter 820's requirements so that the non-core utility services associated with the Areawide Contract undertaken by CMP need not occur in a separate subsidiary. The transactions to take place between CMP and its affiliate Union Water as described by CMP in its July 22, 1998 Supplemental Filing are not adverse to the public interest and

[4] In any rate proceeding, including an ARP rate change that involves earnings sharing, CMP must report the profits from the Areawide Contract.

[5] The parties joining in the Stipulation represent a sufficiently broad spectrum of interests; the process leading to the Stipulation was fair to all parties; and the result is reasonable and not contrary to legislative mandate and is in the public interest. See e.g. *Consumers Water Company Proposed General Rate Increase*, Docket No. 96-739 (July 3, 1997).

are therefore approved pursuant to 35-A M.R.S.A. § 707(3). Based on the confidential information provided by CMP, it does not appear that profits associated with projected contracts will be of an amount to warrant profit sharing or a good will payment to CMP. Union Water must pay for costs incurred by CMP on Union Water's behalf as required by Chapter 820. Pursuant to the Stipulation, no new projects will occur under the Contract after February 29, 2000 without our approval. It is possible that by that time the federal statutory authority for these contracts will have changed. As provided for in the Stipulation, we also allow CMP to charge for services provided under the Areawide Contract on the federal customer's regular CMP bill. No billing services arrangements for new projects entered into after February 29, 2000 will be permitted absent specific Commission approval, unless CMP provides similar services to other non-affiliated entities.

Accordingly, we

1. Approve the Stipulation filed by the Public Advocate and Central Maine Power Company on August 5, 1998, as described in the body of this Order; and

2. Direct the Administrative Director to close this docket.

Dated at Augusta, Maine this 3rd day of September, 1998.

BY ORDER OF THE COMMISSION

_____

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: WELCH
NUGENT

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.